



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 22

July 18, 2007

S. 1762 – the Higher Education Access Act of 2007

Calendar No. 266

Reported on June 20, 2007 by the Senate HELP Committee by a vote of 17 to 3. Placed on the Senate Legislative Calendar under General Orders on July 10, 2007.

NOTEWORTHY

- The Senate agreed to proceed to H.R. 2669, the House-passed reconciliation bill earlier today. Shortly thereafter, Senator Ted Kennedy offered S. 1762, the Senate reconciliation bill reported out of the HELP Committee, as a substitute amendment.
- On May 17, the House and Senate approved the conference report to S. Con. Res. 21, the Concurrent Resolution on the FY 2008 Budget. Included in the bill were reconciliation instructions calling for a reduction in the deficit by \$750 million over six years. H.R. 2669, the House reconciliation bill, passed the House on July 11. The Senate reconciliation bill, S. 1762, was reported by the HELP Committee on June 20 and placed on the Senate Legislative Calendar on July 10.
- S. 1762 would reduce federal spending by approximately \$19.5 billion over six years. The bill accomplishes this through reduction in the government's payments to lenders and guarantee agencies. However, less than one billion would go toward deficit reduction. The majority of these savings would go toward new spending, including the creation of the new Promise Grants mandatory program.
- As a reconciliation bill, S. 1762 cannot be filibustered in the Senate. Debate is limited to 20 hours in the Senate, all amendments must be germane, and the bill can pass that body with a simple majority. In addition, "Byrd Rule" points of order can be raised against extraneous provisions in the reconciliation bill that do not have a direct budgetary impact, requiring 60 votes to waive the point of order. A 60-vote point of order would also lie against any amendment that would take the bill out of compliance with its instructions.

Highlights

On May 17, the House and Senate approved the conference report (H. Rept. 110-153) to S. Con. Res. 21, the Concurrent Resolution on the FY 2008 Budget. The annual concurrent resolution sets the Congressional budget. According to the Congressional Research Service, when the federal deficit is anticipated to be large, budget resolutions often require reductions in mandatory spending. In such instances, the budget resolution issues reconciliation instructions requiring authorizing committees to report changes to reduce spending on mandatory programs under their jurisdiction.¹ The reconciliation instructions in the conference agreement called for a reduction in the deficit by \$750 million over six years.

The FY2008 budget resolution includes reconciliation instructions that direct the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor and Pensions to report legislation to reduce spending on mandatory programs within their jurisdiction by \$750 million for FY2007-2012. Within the committees' jurisdiction are two major mandatory programs – the Federal Family Education Loan (FFEL) program and the William D. Ford Direct Loan (DL) program.

Under the FFEL program, loan capital is provided by private lenders. The federal government guarantees lenders against loss through borrower default. Under the DL program, however, the federal government provides loans to students and their families using federal capital (i.e. funds from the U.S. Treasury).² Currently, both programs are authorized and the two programs compete for student loan business. Arguably the existence of both programs and the competition they generate serve students by lowering fees. In FY 2006, both programs provided \$60 billion in new loans to student and their parents. In that year the FFEL program provided 10,982,000 new loans, while the DL program provided 2,841,000 new loans.³

To meet the requirements of the FY2008 reconciliation instructions, reductions in mandatory spending in the FFEL program are proposed. The proposed reductions are of a sufficient size that they offset a broad array of new or enhanced student aid changes, including new mandatory spending. Arguably, by limiting the bill's spending reductions only to those applicable to the FFEL program, S. 1762 could remove the incentive for some private lenders to continue to participate in the FFEL program. These changes could also change the current balance and competition that exists between the FFEL and DL programs.

To meet the reconciliation instructions, S. 1762, the Higher Education Access Act of 2007, was reported by the HELP Committee on June 20 by a vote of 17 to 3. It was placed on the Senate Legislative Calendar on July 10. The House considered and passed H.R. 2669, its bill to satisfy reconciliation instructions, on July 11 by a vote of 273 to 149.

¹ Congressional Research Service (CRS), "Student Loans, Student Aid, and FY2008 Budget Reconciliation," CRS Report to Congress RL34077, July 6, 2007.

² CRS.

³ CRS.

S. 1762 would reduce the government's payments to lenders and guarantee agencies by approximately \$19.5 billion over six years. At the same time, S. 1762 uses much of these savings to create the Promise Grant program, a new mandatory grant program. Below is a chart summarizing the bill's spending reductions and increases. Concern has been raised that reconciliation is intended to provide Congress the opportunity to review entitlement spending programs, not increase federal spending. So while S. 1762 complies with the reconciliation instructions, it also increases federal entitlement spending by over \$18 billion. According to Senator Judd Gregg, ranking member of the Senate Budget Committee, "to find massive amounts of savings in entitlement programs, and use only a tiny fraction of it for deficit reduction while hijacking the rest for the creation and expansion of new programs, is a blatant abuse of this process."⁴

2007 Reconciliation Senate-Reported	
(\$ in billions, outlays)	
	2007- 2012 Senate
Spending Reductions	
SAP Reduction	-11.21
PLUS Auction	-2.03
Eliminate Excp Performer	-1.00
Increase O Fee to 100 bp	-2.23
Public Svc. DL Consolidation	-0.02
GA Retention Fee to 16 pct	-1.94
GA Per Loan Svc Fee	-1.04
Gross Savings	-19.46
Spending Increases	
Financial Literacy Grants ¹	0.05
College Access Partnership Grants ¹	0.02
Perkins Loan Recall Delay	0.45
Pell Grant Eligibility Rule Change	0.05
New State Grants for College Access ¹	0.05
FAFSA Changes	0.04
Pell Grant Appropriations ²	13.91
ICR and Deferment Changes ¹	2.82
Interactions	<u>1.16</u>
Gross Spending	18.54
Net Savings	-0.925
<i>Source: CBO, Senate Budget Committee-Republican Staff</i>	

Note:

¹ New program.

² Existing discretionary program funded as mandatory on authorizing bill; includes new Promise Grants.

⁴ Statement of Senator Judd Gregg, "Senator Gregg Opposes Manipulation of Reconciliation Process in Senate Higher Education Package," June 20, 2007.

Background

The Congressional Budget Act of 1974 requires Congress to adopt at least one Budget Resolution each year. A key enforcement procedure that is sometimes, but not always, included in the Budget Resolution is budget reconciliation. The reconciliation process gives Congress the means to achieve revenue, mandatory-spending, and debt limit levels consistent with the goals of the current Budget Resolution.

An important feature of the reconciliation procedure is that it cannot be filibustered in the Senate. Debate is limited to 20 hours in the Senate, all amendments must be germane, and the bill can pass that body with a simple majority. In addition, “Byrd Rule” points of order can be raised against extraneous provisions in the reconciliation bill that do not have a direct budgetary impact, requiring 60 votes to waive the point of order. The Byrd Rule also prohibits any changes in Social Security and prohibits any provisions that would increase the deficit in the years following the time period covered by the budget resolution (i.e., years after 2012).

Bill Provisions

Section 1 – Short Title

TITLE I—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

Section 101 – Tuition Sensitivity

Section 101 eliminates the Pell grant “tuition sensitivity” provision that could negatively affect award amounts for students attending low-cost institutions, such as community colleges. There are authorized to be appropriated and there are appropriated to carry out this section \$5,000,000 for fiscal year 2008.

Section 102 – Promise Grants

Section 102 creates a new grant program for low-income, Pell-eligible students to be established in addition to the Pell grant program. Promise grants shall be awarded in the same way Pell grants are awarded, except that they shall only be awarded to students who are already eligible for Pell grants. Grants shall be awarded to those students with the greatest need, as determined under Section 471. Grants awarded under this subsection shall be used to supplement and not supplant other Federal, State, and institutional grant funds.

Authorizes and appropriates the following amounts to carry out the Promise grant program: \$2,620,000,000 in fiscal year 2008; \$3,040,000,000 for fiscal year 2009; \$3,460,000,000 for fiscal year 2010; \$3,900,000,000 for fiscal year 2011; \$4,020,000,000 for fiscal year 2012; \$10,000,000 for fiscal year 2013; and \$3,200,000,000 for each of fiscal years 2014 through 2017.

TITLE II—STUDENT LOAN BENEFITS, TERMS AND CONDITIONS

Section 201 – Deferments

Section 201 extends the amount of time under which a borrower can receive a deferment for economic hardship under Part B, Part D, and Part E of title IV from three to six years. This extension shall apply to borrowers who take out their first loan prior to October 1, 2012.

Section 202 – Student Loan Deferments for Certain Members of the Armed Forces

Section 202 eliminates the three year limitation on the period for which certain members of the armed forces may receive deferments on the interest on their student loans. It also extends this deferment period to cover 180 days after such a member of the armed forces is demobilized. As in current law, members of the armed forces who qualify for this deferment are limited to those who are serving on active duty or performing qualifying National Guard duty during a war or other military operation in a national emergency.

Section 203 – Income-based Repayment Plans

Section 203 replaces the terms “income-contingent repayment plan” and “income-sensitive repayment plan” in current law with the term “income-based repayment plan.” It establishes that an income-based repayment plan, available for loans made under both Part B and Part D of Title IV (except for parent PLUS loans), would limit a borrower’s monthly payments to (1) 15 percent of the amount by which a borrower’s adjusted gross income exceeds 150 percent of the poverty line,⁵ (2) divided by 12. Provides that borrowers repaying loans according to income-contingent repayment or income-sensitive repayment plans prior to enactment of this Act shall have the option of continuing to repay under the terms and conditions of those programs as they existed prior to enactment of this Act or may elect to use the income-based repayment plan created by this section.

Section 203 also establishes that the Secretary shall forgive outstanding loan balances for borrowers of loans made under both Part B and Part D of Title IV after 25 years, except that parent PLUS loans shall not be eligible for such loan forgiveness. The changes made under this section shall be available to borrowers who take out their first loan prior to October 1, 2012.

TITLE III—FEDERAL FAMILY EDUCATION LOAN PROGRAM

Section 301 – Reduction of Lender Insurance Percentage

Section 301 reduces the insurance paid by the Federal government on defaulted loans guaranteed under title IV from 98 percent to 97 percent of the unpaid principal of such loans.

⁵ Currently, the poverty level for a family of four is \$20,650 (\$25,820 in Alaska and \$23,750 in Hawaii). Source: of 2007 HHS Poverty Guidelines, <http://aspe.hhs.gov/poverty/07poverty.shtml>.

Section 302 – Guaranty Agency Collection Retention

Section 302 reduces the percentage which guaranty agencies shall be allowed to retain from payments made through collections on defaulted loans from 23 percent to 16 percent.

Section 303 – Elimination of Exceptional Performer Status for Lenders

Section 303 eliminates the provision that allows lenders designated as “exceptional performers” to receive 99 percent insurance on defaulted loans. This change shall be effective October 1, 2007, except that lenders designated as exceptional performers as of that date shall be allowed to continue such designation for the remainder of the year for which the designation was made.

Section 304 – Definitions

Section 304 changes part of the definition of economic hardship. Currently a borrower can qualify for economic hardship if he is working full-time and making less than 100 percent of the poverty level for a family of two. This section provides that a borrower working full time shall be eligible if he is making less than 150 percent of the poverty level for his family size. It makes no change to the other eligibility categories for economic hardship. This amendment shall apply to borrowers who take out their first loan prior to October 1, 2012.

Section 304 also establishes a definition of eligible not-for-profit holder, a term used in Section 305. Eligible not-for-profit holder means an eligible lender that is a State, political subdivision thereof, or an authority, agency or other instrumentality thereof, or an entity with not-for-profit status under the tax code, or a trustee acting as an eligible lender on behalf of one of these entities. It establishes that no eligible not-for-profit holder shall be owned or controlled, in whole or in part, by a for-profit entity, and that if an eligible not-for-profit holder sells loans on which the Secretary is paying the higher special allowance payment designated for eligible not-for-profit holders described in Section 305, to a for-profit entity or an entity that is not an eligible not-for-profit holder, such loans shall, from that date, instead receive the special allowance payment designated for other such lenders, as described in Section 305. It requires the Secretary to promulgate regulations implementing this provision no later than one year after the date of enactment.

Section 305 – Special Allowances

Section 305 reduces the special allowance payment rate for lenders; currently set for student loans at the Commercial Paper (CP) lending rate plus 1.74 percent while borrowers are in school or grace period and CP plus 2.34 percent while borrowers are in repayment, for PLUS loans at CP plus 2.64 percent, and for consolidation loans at CP plus 2.64 percent (less the 1.05 percent annual rebate fee). For loans held by for-profit lenders, changes rates to CP plus 1.24 percent for in-school loans, to CP plus 1.84 percent for student loans in repayment and for PLUS loans (except those affected by Section 801 of this Act), and to CP plus 2.14 percent for consolidation loans (less the 1.05 percent annual rebate fee). For loans held by not-for-profit lenders, changes rates to CP plus 1.39 percent for in-school loans, to CP plus 1.99 percent for student loans in

repayment and for PLUS loans (except those affected by Section 801 of this Act), and to CP plus 2.29 for consolidation loans (less the 1.05 percent annual rebate fee).

This section also increases the fee the Secretary shall collect from lenders under Section 438(d) of title IV on each loan disbursed from 0.50 percent to 1 percent.

TITLE IV—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

Section 401 – Loan Forgiveness for Public Service Employees

Section 401 creates a new loan forgiveness plan through the Direct Loan program for public service employees. The change provides that the Secretary shall forgive the remaining loan balance on a loan under part D of title IV for a borrower who has been employed in a public sector job and has been making payments on such loan for a period of ten years (which need not be consecutive). Such borrowers shall be eligible to have 1/10 of the remaining loan balance forgiven for each of the ten years in which the borrower earned less than or equal to \$65,000. In this section, the term “public sector job” means a full-time job in emergency management, government, public safety, public law enforcement, public health, public education, public early childhood education, public child care, social work in a public service agency, public services for individuals with disabilities, public services for the elderly, public interest legal services (including prosecution or public defense), public library sciences, public school library sciences, other public school-based service providers, and teaching as a full-time faculty member at a Tribal College or University.

Section 402 – Unit Cost Calculation for guaranty Agency Account Maintenance Fees

Section 402 changes the method by which account maintenance fees are calculated on loans from a calculation based on the total amount of loan principal to a per-loan basis.

TITLE V—FEDERAL PERKINS LOANS

Section 501 – Distribution of Late Collections

Section 501 delays the date on which institutions must return to the Secretary late collections on Perkins loans to September 30, 2012 (from March 31, 2012).

TITLE VI—NEEDS ANALYSIS

Section 601 – Support for Working Students

Section 601 increases the amount of the income protection allowance protected in the calculation of a student’s expected contribution in the following ways: (1) For dependent students, it increases the amount of the income protection allowance to \$3,750 for the 2009-2010 academic year; \$4,500 for the 2010-2011 academic year; \$5,250 for the 2011-2012 academic year; and \$6,000 for the 2012-2013 academic year; (2) for independent students without dependents other than a spouse, who are single, separated, or married with both spouses enrolled, it increases the

amount of the income protection allowance to \$7,000 for the 2009-2010 academic year; \$7,780 for the 2010-2011 academic year; \$8,550 for the 2011-2012 academic year; and \$9,330 for the 2012-2013 academic year. For independent students without dependents other than a spouse, who are married and whose spouse is not enrolled, it increases the amount of the income protection allowance to \$11,220 for the 2009-2010 academic year; \$12,460 for the 2010-2011 academic year; \$13,710 for the 2011-2012 academic year; and \$14,690 for the 2012-2013 academic year. For independent students with dependents other than a spouse, it increases the amount of the income protection allowance as specified by the tables contained in this section, for a total increase of 50 percent over four years. Under this section, for all students, the income protection allowance reverts to current law after the 2012-2013 academic year.

Section 602 – Automatic Zero Improvements

Section 602 increases the family income level under which a student is automatically eligible for the maximum Pell grant from \$20,000 to \$30,000.

Section 603 – Discretion of Student Financial Aid Administrators

Section 603 clarifies and expands the conditions under which financial aid administrators may use discretion in calculating the expected student or family contribution to include an independent student's loss of employment or a change in a student's housing status that results in homelessness.

Section 604 – Definitions

Section 604 makes changes to the definition of "independent student." It expands the definition of independent students to include: individuals in foster care or those who were in foster care until the age of 18; emancipated minors or individuals in legal guardianships as determined by an appropriate court in such an individual's State of legal residence; and individuals who have been adequately verified as an unaccompanied youth who is a homeless child or youth, as defined in the McKinney-Vento Homeless Assistance Act. It clarifies that financial aid administrators may make determinations regarding a student's independent status based on a documented determination of independence by another financial aid administrator in the same year. This section clarifies that a qualified education benefit shall be considered the asset of the student, if the student is independent; or of the parent, if the student is dependent.

This section also establishes that special combat pay shall not be included in a student's calculation of need for federal student financial assistance, and shall not be treated as financial assistance. Special combat pay is defined as pay received by a member of the Armed Forces because of exposure to a hazardous situation.

Section 605 – Authorization and Appropriations

There are authorized to be appropriated and there are appropriated \$10,000,000 for fiscal year 2008 to pay for the estimated increased cost in the Pell program for award year 2007-2008 resulting from the amendments made by sections 603 and 604.

TITLE VII—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE

Section 701 – Student Eligibility

Section 701 eliminates the question on the FAFSA asking applicants whether they have been convicted of drug possession while receiving federal student assistance. Does not eliminate the penalty rendering such students ineligible, but prohibits this question from being asked on the FAFSA. There are authorized to be appropriated and there are appropriated to carry out this section \$5,000,000 for fiscal year 2008 to pay the estimated increase in costs in the Pell Grant program for award year 2007-2008.

TITLE VIII—MISCELLANEOUS

Section 801 – Competitive Loan Auction Pilot Program

The Secretary is directed to carry out a pilot program to establish a mechanism for the auction of all eligible PLUS loans to begin July 1, 2009. Eligible PLUS loans are loans made to parents of dependent students.

The Secretary shall administer one auction for each state, in which eligible lenders shall compete to originate all eligible PLUS loans at institutions of higher education within the state. The Secretary shall establish a prequalification process for lenders who wish to participate in an auction, which shall set forth the borrower benefits and servicing requirements each eligible lender shall meet in order to participate in an auction. Such auctions shall take place in each state every two years; and each auction shall have two winning eligible lenders. These two winners in each state shall be the only lenders eligible to originate federal parent PLUS loans at all institutions in such state for those two years; such winners shall be legally obligated to originate loans to the parent of any eligible student attending an institution of higher education in the state that wishes to take out a Federal PLUS loan. Such winners shall have the right to continue to make loans to the two cohorts of new borrowers during the auction period and for each such cohort until the students on behalf of whom loans are made graduate from or leave an institution in the state.

Lenders shall make bids in the auctions established under this pilot program based on the amount of special allowance payment the lender is willing to receive from the Secretary on such loans. No bid will be accepted that exceeds the special allowance payment paid to for-profit entities for loans not included in the pilot program. If in any state there are no appropriate winning bids, all schools in the state shall be served by a lender of last resort, as determined by the Secretary for

such state. All bids made under this section shall remain confidential throughout and after the auction.

The Secretary shall guarantee all loans made through this pilot program against losses resulting from default in an amount equal to 99 percent of the unpaid principal and interest due on the loan.

Borrowers receiving loans from a winning bidder who wish to consolidate such loans shall first notify the lender who won the auction and the right to make loans to such borrower. If such lender refuses to match, within 10 days, the consolidation terms and conditions being offered by another lender, the borrower shall have the right to consolidate with such other lender.

Lenders holding consolidation loans consisting of loans made through the auction shall be paid a special allowance payment equal to the weighted average special allowance payment on such loans, except that such special allowance payment shall not exceed the Commercial Paper lending rate plus 1.59 percent.

This section also establishes a College Access Partnership grant program to make payments to States to assist them in carrying out specified activities relating to increasing college access for low-income students in the state. The federal share of the matching grant is 2/3 and the state share is 1/3. Activities may be carried out under this grant by state agencies or not-for-profit organizations that the state designates, including not-for-profit lenders, and must be made available to all qualifying students in the state, with a priority given to students and families living below the poverty line. Authorizes and appropriates \$25 million for each of fiscal years 2008 and 2009 for the purposes of carrying out this section.

Allowable uses include information for students and families on the benefits of postsecondary education, postsecondary education opportunities, planning for postsecondary education, and career options; information on financing options for postsecondary education and activities that promote financial literacy and debt management; assistance in completion of the FAFSA; need-based grant aid; student loan forgiveness or interest rate reductions for borrowers who are employed in a geographic area or profession of high-need in a state, as determined by the state; and professional development for either secondary school guidance counselors or financial aid administrators or college guidance counselors at institutions of higher education. Funds provided by the grant program established under this section shall not be used to promote any lender's loans. Authority to carry out this section shall expire on September 30, 2009.

This section also establishes a Financial Literacy Program to award grants to eligible entities to increase the financial literacy of students who are enrolled or will enroll in an institution of higher education, including instruction to students on topics such as the understanding of loan terms and conditions, the calculation of interest rates and future savings for education, health care, long-term care and retirement. Each eligible entity that receives a grant under this program shall provide from non-federal funds an amount, either in case or in kind, equal to 100 percent of the amount received in the grant. Authorizes and appropriates \$10 million for each of fiscal years 2008 and 2009 for the purposes of carrying out this program.

Also established by the section is a Secondary School Graduation and College Enrollment Program. This program is to award grants to eligible entities to create models of excellence for academically rigorous secondary schools, increase secondary school graduation rates, raise the rate of students who enroll in an institution of higher education, and create, implement and utilize early warning systems to help identify students at risk of dropping out of secondary schools. Eligible entities include consortia of nonprofit organizations, institutions of higher education and local education agencies. Each eligible entity that receives a grant under this program shall provide from non-federal funds an amount, either in case or in kind, equal to 100 percent of the amount received in the grant. Authorizes and appropriates \$25 million for each of fiscal years 2008 and 2009 for the purposes of carrying out this program.

Administration Position

A Statement of Administration Position on S. 1762 was not available at press time.

During consideration of the House reconciliation bill, a Statement of Administration Position was issued indicating that should H.R. 2669 be presented to the President in its current form, “his senior advisors would recommend that he veto the bill.” H.R. 2669, different than the Senate bill, would create nine new mandatory spending programs in addition to reducing the current fixed student loan interest rate, a costly measure that would only benefit students once they leave school.

Cost

The Congressional Budget Office (CBO) issued a cost analysis on S. 1672 on July 3, 2007. According to CBO, the bill would amend the Higher Education Act of 1965 and reduce the government’s payments to lenders and guaranty agencies, as well as modify fees for lenders, and use much of these savings to create a new mandatory grant program. It would also delay the recall of the Perkins loan funds, alter student eligibility for grants and loans, and create several new mandatory grant programs for states and other organizations. CBO estimates that net effects of those changes would reduce direct spending by \$926 million over the 2008-2012 period, and by \$5.7 billion over the 2008-2017 period.

S. 1672 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on states, local, or tribal governments. The full cost estimate from CBO can be found at <http://www.cbo.gov/ftpdocs/82xx/doc8282/HigherEduRecon.pdf>.

Possible Amendments

Numerous amendments addressing a variety of issues are anticipated. Those possibilities known at press time include:

- A managers' amendment;
- An amendment to recapture unused employment-based visas from 1996 and 1997 and to provide a one-time increase in H-1B visas, among other things;
- A Nelson/Burr amendment to equalize the cut in the Special Allowance Payment for all lenders at 35 basis points;
- An amendment to reauthorize the Higher Education Act, or individual provisions in multiple amendments;
- An amendment to reinstate the question on the FAFSA asking applicants whether they have been convicted of drug possession while receiving federal student assistance; and
- An amendment to add the DREAM Act, legislation to repeal Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 which bars states from granting in-state tuition rates to undocumented aliens unless the state offers the same rate to all U.S. citizens without regard to residency, provides six-year conditional legal status to undocumented aliens if they enroll in an institution of higher learning, and provides permanent residency (green card) if they obtain a degree.